

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
ROY G. MILLER,

Appellant,

v.

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 745

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$100.00 civil penalty for an alleged open burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (W. A. Gissberg, presiding officer, and Walt Woodward) as an informal hearing in the Spokane facility of the State Department of Labor and Industries on March 12, 1975.

Appellant appeared pro se; respondent through James P. Emacio, Spokane County deputy prosecuting attorney. Edward Carr, Spokane court reporter, recorded the proceedings.

Witnesses were sworn and testified. An exhibit was admitted.

1 From testimony heard and exhibit examined, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d
6 Ex. Sess., has filed with this Board a certified copy of its
7 Regulation I containing respondent's regulations and amendments thereto.

8 II.

9 Section 6.01(A)(5) of respondent's Regulation I makes it unlawful
10 to ignite, cause, permit, suffer, allow or maintain a non-exempt open
11 fire in Spokane County without first obtaining a permit from respondent.
12 Section 6.01(B) declares it shall be prima facie evidence that the person
13 who owns or controls property on which an unlawful open fire burns has
14 caused or allowed said fire. Section 2.11(D) authorizes a civil
15 penalty of not more than \$250.00 for each violation of Regulation I.

16 III.

17 On September 24, 1975, on a wheat farm west of Cheney, Spokane
18 County, a weed-control fire burned an area of more than two acres. The
19 weather was hot and dry and had been so for several days. Men and
20 equipment from Spokane County Fire District No. 3 were required to
21 extinguish the fire.

22 IV.

23 No permit was obtained or sought for the fire from either respondent
24 or Fire District No. 3. A weed-control fire is not exempt from the
25 permit provisions of Section 6.01 of respondent's Regulation I.

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27 FINAL FINDINGS OF FACT,
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V.

The property on which the fire was ignited and burned is leased by a corporation of which appellant is president. He manages the farm. He had no knowledge of the fire and did not order it to be ignited.

VI.

The fire was ignited by appellant's son, Barry, an employee of the corporation, in an effort to destroy a small patch of weeds, but the fire spread beyond the originally-planned burn area.

VII.

Respondent served a Notice of Violation on appellant, citing Section 6.01 of Regulation I and subjecting appellant to a \$100.00 civil penalty, which is the subject of this appeal.

VIII.

Any Conclusion of Law hereinafter cited which is deemed to be a Finding of Fact is adopted herewith as same.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

There was a violation of Section 6.01 of respondent's Regulation I at the date and place cited in the instant Notice of Violation. The amount of the civil penalty is reasonable.

II.

However, appellant, who did not know of or order the fire and who neither owns nor controls the property on which the fire occurred, cannot be held for the violation.

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1 III.

2 Respondent could and should name the legally-responsible violator,
3 i.e., Barry Miller and/or the corporation.

4 IV.

5 Any Finding of Fact cited herein which is deemed to be a
6 Conclusion of Law is adopted herewith as same.

7 Therefore, the Pollution Control Hearings Board issues this

8 ORDER

9 The appeal is sustained, the civil penalty is revoked as to
10 Roy G. Miller and this matter is remanded to respondent for further
11 appropriate action as contained herein.

12 DONE at Lacey, Washington this 17th day of March, 1975.

13 POLLUTION CONTROL HEARINGS BOARD

14 
15 W. A. GISSBERG, Member

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17 WALT WOODWARD, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER